IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ petition No. 1027 (M/S) 2003

Presigen Instruments Pvt. Ltd. --- Petitioner

Vs.

Addl. District Judge/F.T.C., Haridwar,
And another. --- Respondents.

Hon'ble P.C. Verma,J.

Heard Sri B.S. Verma, learned counsel for the petitioner and learned Standing Counsel for respondent No 1.

This writ petition arises out of the proceedings in regular Suit No. 58 of 1994 Presigin Instrument Pvt. Ltd. Vs. Rajeshwar Prasad. The aforesaid suit was filed by the plaintiff, which was dismissed for non-prosecution. The plaintiff moved an application under Order-9 Rule-9 of the Code of Civil Procedure alongwith application under Section 5 of the Limitation Act. The application under Section 5 of the Limitation Act was allowed and the application under Order-9 Rule-9 of the Code of Civil Procedure was fixed for hearing. The defendant filed revision against the order passed under Section 5 of the Limitation Act. The revision of the defendant was allowed and the matter was remanded to the Trial Court to decide it afresh.

Learned counsel for the petitioner submits that the Revisional Court cannot record finding of fact in a revision filed under Section 115 of the Code of Civil Procedure in which he has remanded the case and directed to decide the application afresh. Being satisfied that reasons stated for condonation of delay were satisfactory the delay was condoned by the Trial Court. The Revisional Court cannot substitute its satisfaction over the Trial Court. I find force in the arguments advanced by the learned counsel for the petitioner. Therefore, it is directed that the Trial Court shall decide the application ignoring the finding of fact recorded by the Revisional Court.

Subject to above, the petition is dismissed.

(P.C. Verma, J.)

October 15,2003:
NCM: